

7.1.4 Adjustment of Service Levels

The Management Committee (a) shall, once during each twelve- (12-) month period during the Term, review the Service Levels for the preceding twelve (12) months, and (b) shall, if agreed upon by the Parties, prospectively improve the Service Levels as may be appropriate given Improvements and Updates incorporated into the System or Services. In addition, the TLC may, at any time upon notice to Contractor, initiate negotiations to review and, upon agreement by the Management Committee, improve any Service Level that the TLC, in good faith, believes should be improved. Any modifications to the Service Levels shall be processed as a Change in accordance with 4.12.2 (Change Control Procedures).

7.2 Measurement and Monitoring

At its cost and expense, Contractor shall implement the reporting procedures and the measurement and monitoring tools and metrics described in Attachment SLA (Service Levels) or the Procedures Manual to allow the TLC to monitor performance of the Services and the System against the applicable Service Levels. For the purpose of verifying Contractor's performance measurements, Contractor shall provide the TLC reasonable access to Contractor's performance measurement and management reporting Tools.

7.3 Problem Analysis

In the event of any Performance Failure (whether or not such Performance Failure constitutes a Critical Performance Failure), Contractor shall report the Performance Failure to the Management Committee, correct the problem, and identify the root cause of the problem in accordance with Attachment SLA (Service Levels) and the Procedures Manual. For Performance Failures affecting less than five percent (5%) of the Taxicabs subject to Owner-Contractor Contracts, however, Contractor may submit summary reports of the root cause of the problem. Contractor shall advise the TLC, as and to the extent requested by the TLC or as otherwise required by this Agreement, of the status of remedial efforts undertaken with respect to all Performance Failures and shall provide appropriate documentation to demonstrate to the TLC that the causes of Performance Failures have been identified and will be corrected.

7.4 Periodic Reviews

Within six (6) months after the Actual Service Commencement Date and at least annually thereafter, the Management Committee shall review the Service Levels and adjust them as reasonable and appropriate under Section 7.1.4 (Adjustment to Service Levels). The Parties anticipate that the Service Levels will improve over time consistent with the introduction of new technology and methods.

7.5 Continuous Improvement

Contractor shall, on a continuous basis (a) as part of its total quality management process, identify ways to improve the Service Levels and (b) identify and apply proven techniques and Tools from other installations within its operations that

would benefit the TLC or the New York City taxicab industry, either operationally or financially. Contractor shall, from time to time, update the TLC on the availability and effectiveness of such Improvements. If the TLC decides to adopt any such Improvement, the Parties shall implement the Improvement as a Change or, if applicable, a New Service in accordance with Section 4.12 (New Services and Changes to Existing Services).

7.6 Satisfaction Surveys and Focus Group Studies

7.6.1 During the System Development

Prior to the completion of the Acceptance Tests, the TLC may, in its sole discretion, engage a third party to conduct Passenger surveys and focus group studies to evaluate the Passengers' and Drivers' reaction to the PIM and PIM content. If, as the result of the surveys or focus group studies, the TLC reasonably determines that modifications to the PIM content, features or functions are necessary to optimize the Passenger or Driver experience, (a) the TLC shall notify Contractor of the specific nature of the modifications and (b) Contractor shall implement such modifications (at no additional cost) unless they conflict with the Requirements. For good cause shown by Contractor, the TLC may waive its rights and remedies arising out of Contractor's failure to meet the Implementation Schedule to the extent that failure to meet the Implementation Schedule is attributable to Contractor's implementation of material modifications to the PIM content, features or functions under this Section 7.6.1.

7.6.2 After Final System Acceptance

Commencing after the first annual anniversary of the Actual Service Commencement Date, the TLC may, in its sole discretion, at least once every twelve (12) months during the Term engage a third party to conduct Passenger and Driver satisfaction surveys or focus group studies for the aspects of the Services and System designated by the TLC. If, as the result of any such satisfaction surveys or focus group studies, the TLC reasonably determines that modifications to the Taxicab System are necessary to improve the Passenger or Driver experience when using the Taxicab System, Contractor shall implement such modifications as a TLC-initiated Change pursuant to Section 4.12.2 (Change Control Procedures); *provided, however, that* such Change shall not give rise to any additional charges or fees payable either by the TLC or any Owner (or Medallion Agent) where such Change affects the content presented to Passengers via the PIM.

8 GOVERNANCE AND CONTRACT MANAGEMENT

8.1 Contractor Advisory Committee

The Contractor Account Manager and an additional senior level manager of Contractor designated by Contractor shall participate in the "Contractor Advisory Committee" organized by the TLC. In addition to Contractor's representatives, the Contractor Advisory Committee shall be comprised of (a) a Deputy

Commissioner, and other TLC representatives appointed by him or her, (b) a representative from the City's Department of Information Technology and Telecommunications, (c) a representative of the Passenger community selected by the TLC from the Taxicab Advisory Board, and (d) account managers and senior level managers representing all of the other Authorized Contractors. The purpose of the Contractor Advisory Committee is to facilitate discussion on matters relating to the Services and the information technology requirements of the New York City taxicab industry. The Contractor Advisory Committee shall meet semi-annually (at dates and times specified by the TLC in writing) to discuss topics selected by the TLC. Contractor Advisory Committee meetings will be held at the TLC's New York City offices or such other locations reasonably specified by the TLC in written meeting notices submitted to members of the Contractor Advisory Committee. Each Party will bear the cost of its participation in Contractor Advisory Committee meetings.

8.2 TLC-Contractor Steering Committee

The Parties shall form an "Executive Steering Committee" to facilitate communications between them. The Executive Steering Committee shall consist initially of: (a) for the TLC, a Deputy Commissioner, and two (2) other representatives appointed by him/her and (b) for Contractor, its President, Chief Financial Officer and Vice President. The Parties may designate other senior management personnel for membership on the Executive Steering Committee from time to time, provided that Contractor's representative must include its President or an executive of equivalent seniority. The Executive Steering Committee shall meet semi-annually to review the monthly performance reports for the previous six (6) months, Contractor's performance under this Agreement and open issues, conduct strategic planning with respect to information technology requirements of the New York City taxicab industry, and discuss such other matters as either Party deems appropriate. Executive Steering Committee meetings will be held at the TLC's New York City offices or such other location reasonably specified by the TLC from time-to-time. Each Party will bear the cost of its participation in Executive Steering Committee meetings.

8.3 Management Committee

The "Management Committee" shall meet regularly (as designated by the TLC from time to time) to review performance of the Services and the System, as described herein. The Management Committee shall be composed of the Contractor Account Manager, the TLC Program Manager, and other respective designees of the Parties. The Parties shall have equal representation on the Management Committee. Management Committee meetings will be held at the TLC's New York City offices or such other locations as the TLC shall reasonably specify from time-to-time. Each Party will bear the cost of its participation in meetings of the Management Committee.

8.4 Contractor Account Team

8.4.1 Implementation Project Manager

Contractor shall appoint an individual (the "Implementation Project Manager") who, from the Effective Date until the completion of the Implementation Schedule, will serve as the TLC's single point of contact with Contractor with respect to all Implementation Plan activities. The Implementation Project Manager shall dedicate a substantial portion of his or her time to managing Contractor's development and implementation of the System and Services.

8.4.2 Account Management

Contractor shall appoint an individual (the "Account Manager") who, from the Effective Date, shall serve as the primary Contractor representative under this Agreement. The Contractor Account Manager shall (a) have overall responsibility for managing and coordinating the performance of Contractor's obligations under this Agreement and (b) be authorized to act for and on behalf of Contractor with respect to all matters relating to this Agreement.

8.4.3 Key Personnel

Contractor's Account Manager and Implementation Project Manager are "Key Personnel." With respect to the Key Personnel, the Parties agree as follows:

- 8.4.3.1 Before assigning an individual to a Key Personnel position, whether as an initial assignment or as a replacement, Contractor shall (a) notify the TLC of the proposed assignment, (b) provide the TLC with a résumé and any other information regarding the individual that may be reasonably requested by the TLC, and (c) arrange for the individual to meet with the appropriate representatives of the TLC. Contractor shall only assign appropriately skilled and trained individuals to Key Personnel positions.
- 8.4.3.2 Contractor shall use its Best Efforts to not replace or reassign the Key Personnel unless such Key Personnel (a) voluntarily resigns from Contractor, (b) is dismissed by Contractor for misconduct (e.g., fraud, drug abuse or theft), (c) fails to perform his or her duties and responsibilities pursuant to this Agreement, (d) accepts a *bona fide* promotion to a new position, (e) dies or is unable to work due to disability, or (f) the TLC directs Contractor to replace such Key Personnel pursuant to Section 8.4.3.3.
- 8.4.3.3 If the TLC in good faith determines that the continued assignment of any Key Personnel to the TLC account is not in the best interests of the TLC or the Owners based on such Key Personnel's performance of, or failure to perform, his or her responsibilities under this Agreement, then (a) the TLC may give Contractor written notice requesting that the relevant Key Personnel be replaced, and (b) the Parties shall, as soon as reasonably practicable after receipt of such notice, meet to discuss the basis of the TLC's concerns. If, during the meeting or promptly thereafter, the Parties

fail to reach agreement as to whether the continued assignment of such Key Personnel is in the best interest of the TLC or the Owners, the dispute shall be immediately escalated to the Executive Steering Committee for resolution. In the event that the Executive Steering Committee is unable to resolve the dispute within sixty (60) days after the issue is escalated to the Executive Steering Committee or the Parties agree that the continued assignment of such Key Personnel is not in the best interest of the TLC or the Owners, Contractor shall promptly replace such Key Personnel.

8.4.3.4 Contractor shall maintain backup procedures and conduct the replacement process for the Key Personnel in such a manner so as to assure an orderly succession of any Key Personnel that is replaced.

8.4.3.5 Nothing in this Agreement grants the TLC or the City the right to require Contractor to terminate any person's employment or otherwise control any aspect of that person's employment except with respect to Contractor's assignment of particular persons or entities to the performance of Services. Contractor shall at all times have and exercise complete and exclusive control over all employees and contractors of Contractor. Such control shall include responsibility for directing each such employee's and contractor's work, evaluation of employee and contractor performance, and the resolution of all complaints and grievances.

8.5 TLC Program Management

Prior to the Actual Service Commencement Date, the TLC shall designate one (1) individual to whom all Contractor communications concerning this Agreement may be addressed (the "TLC Program Manager"). The TLC Program Manager shall have the authority to perform the functions and duties assigned to such position pursuant to this Agreement and the Procedures Manual. The TLC Program Manager shall be available, as reasonably requested by Contractor, to make decisions, provide information, approvals and acceptances to Contractor to the extent required to permit Contractor to perform its obligations and responsibilities under this Agreement.

8.6 Reports and Meetings

8.6.1 Reports and Access to Reporting Tools

Contractor shall deliver to the TLC the periodic Reports described in this Section 8.6.1. The Reports shall be considered TLC Data. The TLC may, in its sole discretion, copy all or any portion of any Report. The TLC may, in its sole discretion, also publish and release all or any portion of any Reports identified in items 1, 2, 3, 4 or 9 below. The disclosure of the Reports identified in items 5, 6, 7 or 8 shall be governed by Section 12 (Confidentiality). At a minimum, these Reports will include the following:

1. Contractor shall provide an up-to-date list of the Owners (and Medallion Agents signing on behalf of Owners) that have entered into Owner-Contractor Contracts with Contractor, and a detailed description of any Owners whose Owner-Contractor Contracts have been cancelled or whose Services have been suspended.
2. During the period beginning on the Actual Service Commencement Date and ending on the Compliance Date, Contractor shall provide weekly progress Reports showing the status of Taxicab installations and taxicab industry training, and thereafter Contractor shall provide monthly progress Reports showing the status of Taxicab installations, taxicab industry training, and de-installations.
3. Contractor shall provide the TLC with a monthly and annual performance Report covering all Services, including a detailed account of the degree to which it has attained or failed to attain and maintain the applicable Service Levels. The Report shall document Contractor's performance with respect to the Service Levels and other requirements applicable to Services and the System, and shall be in a form agreed-upon by the Parties. Contractor shall explain any deviations from the Service Levels, Specifications and other performance requirements and include a plan for corrective action where appropriate.
4. Contractor will provide the TLC with a monthly change Report setting forth, with respect to each Change approved in the previous month, the date each such Change was or will be implemented.
5. In addition to real-time security alerts and notices submitted to the TLC by Contractor as part of the TLC System Services, Contractor shall provide monthly Reports describing the security incidents occurring during the preceding monthly period (including corrective actions taken in response to such security incidents).
6. Contractor shall provide monthly, quarterly and annual Reports showing the advertising-related revenues it obtains from PIM content during the preceding monthly period.
7. Contractor shall provide monthly and quarterly Reports outlining the itemized gross revenue generated under all of the Owner-Contractor Contracts.
8. Contractor shall submit to the TLC an annual written Report signed by an officer of Contractor (a) itemizing gross revenue generated under the Owner-Contractor Contracts and (b) containing a statement that the revenue Report is complete and accurate; if the revenue Report materially misstates the actual revenues and Contractor (or its signing officer) knows (or should

have known) that the Report materially misstates the revenue, then the TLC may terminate this Agreement immediately for cause upon written notice to Contractor.

9. Contractor shall, as part of the TLC System Services, provide additional Reports reasonably required by the TLC for purposes of audit verification.

Contractor shall provide TLC Representatives (who are designated by the TLC in writing to initiate trouble tickets) with real-time access on a 24x7x365 Basis to the help desk and trouble ticket management Tools to allow the TLC to access current information regarding the status of service problems, service requests, orders, and the TLC's and TLC Representatives' inquiries.

8.6.2 Meetings

8.6.2.1 The Parties shall participate in the following regular meetings to be held between representatives of the TLC and Contractor:

1. a monthly meeting of the Management Committee to discuss performance problems and planned or anticipated activities and Changes that might adversely affect System performance or availability;
2. semi-annual meetings of the Executive Steering Committee described in Section 8.2 (TLC-Contractor Steering Committee);
3. Contractor Advisory Committee meetings described in Section 8.1 (Contractor Advisory Committee); and
4. such other meetings set forth in the Procedures Manual or as the TLC deems reasonably necessary to effectively oversee Contractor's performance under this Agreement and the Owner-Contractor Contracts, including individual meetings with Contractor called at the request of TLC.

8.6.2.2 For all of the above meetings (other than the Contractor Advisory Committee meetings_and individual meetings called at the request of the TLC), Contractor shall (a) prepare and circulate an agenda sufficiently in advance of each meeting to give participants an opportunity to prepare for the meeting, (b) incorporate into such agenda any items that the TLC wishes to discuss, and (c) at the TLC's request, prepare and circulate minutes for the TLC's approval promptly after each meeting.

8.7 Procedures Manual

No later than thirty (30) days before the Scheduled Service Commencement Date, Contractor shall deliver to the TLC for the TLC's approval, in the form and scope mutually agreed upon by the TLC and Contractor, the Procedures Manual. Unless the TLC notifies Contractor in writing that the TLC rejects the initial

Procedures Manual within thirty (30) days after the TLC's receipt of the initial Procedures Manual, the Procedures Manual shall be deemed approved by the TLC. Contractor shall periodically prepare and provide to the TLC updates to such Procedures Manual to reflect any agreed upon changes in the procedures described therein within a reasonable time after such changes are made.

8.8 Quality Assurance Processes and Procedures

Contractor shall be responsible for providing and implementing the quality assurance processes and procedures that are necessary to assure that Services and the System are performed accurately, in a timely manner, and at a level consistent with this Agreement and the Contractor Standard of Care. Procedures for conducting checkpoint reviews, testing and acceptance, and other quality assurance procedures shall be set forth in the Procedures Manual.

8.9 Reasonable Cooperation with Others

Contractor agrees to reasonably cooperate with the TLC, the City, TLC Representatives and any Third Parties engaged by the TLC to perform services for the TLC. Such reasonable cooperation ("Reasonable Cooperation") shall include the following:

1. providing information regarding Contractor's operating environment, system constraints, and other operating parameters, standards, and policies for system operations so that the services of such Third Party or TLC Representative may be used in conjunction with those of Contractor, and providing such Third Party or TLC Representative with the written requirements, standards and procedures applicable to the System or TLC-Provided Resources, as requested by the TLC;
2. providing assistance, and support services to such Third Party or TLC Representative in integrating the Third Party's or TLC Representative's products and services with the Services, System and TLC-Provided Resources;
3. providing such Third Party or TLC Representative with interface specification (in writing) for the Hardware, Software, System, and Services (a) as may reasonably be required by such Third Party or TLC Representative and (b) as approved by the TLC;
4. providing such Third Party or TLC Representative with access to the Hardware and Software, relevant TLC Data, the Systems, and Services as may reasonably be required by such Third Party or TLC Representative, and approved by the TLC; and
5. participating in, and complying with, multi-vendor problem identification/resolution procedures, installation coordination procedures, and interface procedures established by the TLC.

As a condition of Reasonable Cooperation, Contractor may require a Third Party to (a) execute a non-disclosure agreement substantially similar to Attachment NDA (Non-Disclosure Agreement Form), (b) comply with Contractor's applicable written technical standards to the extent reasonable under the circumstances and

(c) interconnect to the Hardware, Software, Services and System in accordance with the applicable interface specifications (if any) provided to such Third Party by Contractor in writing.

8.10 Audit Rights

8.10.1 General

- 8.10.1.1 In addition to the audits to be conducted by the Comptroller of the City of New York pursuant to Article 3 (Audit by the Commission and City) of Appendix A (General Provisions Governing Contracts for Consultants, Professional and Technical Services), the TLC or its third-party auditors (at the TLC's expense subject to Section 8.10.2.2) may examine and copy the invoices, fees and payments (if any) submitted under the Owner-Contractor Contracts. Contractor shall retain, and make available in support of such audits, all data and records relating to invoices, fees and payments submitted under the Owner-Contractor Contracts.
- 8.10.1.2 Contractor, at its sole cost and expense, shall maintain current, complete and accurate books and records of all business, accounts, and transactions of the Taxicab System content provider relative to advertising activities. The records must be (a) maintained at Contractor's principal offices (the location of which is identified in the first paragraph of this Master Agreement) during the Term and for a period of not less than six (6) years following the expiration or earlier termination of the Term, and (b) made available to the TLC and the City in New York City. The records are required to include all information necessary and sufficient to support and compute royalties or other fees payable under the Owner-Contractor Contracts.
- 8.10.1.3 Contractor shall also provide to the TLC, its auditors (including internal audit staff), inspectors, regulators and other representatives as the TLC may from time-to-time designate in writing (collectively, "audit representatives"), access at all reasonable times and on reasonable notice to the facilities at which or from which Contractor is providing Services, to Contractor personnel (including Contractor subcontractors) providing Services, and to data and records relating to the Services for the purpose of performing audits and inspections of the Contractor and its operations, to verify the integrity of the TLC Data and Personal Information, to examine systems that process, store, support and transmit that data, and to examine Contractor's readiness to perform under the DR Plan.
- 8.10.1.4 The foregoing audit rights shall include, to the extent applicable to the Services, audits of (a) practices and procedures, (b) PIM advertising content, (c) advertising revenue and commissions paid to Owners

(including commissions paid to Medallion Agents), (d) general controls and security practices and procedures, (e) disaster recovery and backup procedures, and (f) any audits necessary to enable the TLC to meet applicable regulatory requirements. Contractor shall give the TLC's audit representatives such assistance as they reasonably require, including installing and operating audit software. Contractor shall reasonably cooperate with the TLC or its designees in connection with audits and examinations by regulatory authorities. The TLC's audit representatives shall be required to comply with (i) Contractor's and Contractor Agents' reasonable security and confidentiality requirements to the extent such security and confidentiality requirements are made available to the TLC's audit representatives in advance, and (ii) applicable Law. Contractor may require audit representatives (other than City, TLC or other Agency employees) to execute non-disclosure agreements substantially similar to Attachment NDA (Non-Disclosure Agreement Form). In no event shall Contractor's confidentiality requirements imposed on audit representatives or the non-disclosure agreements signed by any third-party audit representatives be construed to prohibit the audit representatives from disclosing to the TLC or the City any information or data obtained by such audit representatives in the course of performing audits under this Agreement.

- 8.10.1.5 If Contractor uses a subcontractor or other Contractor Agent to provide the Services, then Contractor shall ensure that the subcontractor or other Contractor Agent grants the TLC the same rights to conduct audits (as described in this Section 8.10) of such subcontractor or other Contractor Agent's practices and procedures, systems, facilities, data and records.
- 8.10.1.6 Nothing in this Agreement shall be construed to affect or limit the powers of the Comptroller of the City of New York pursuant to applicable Law.

8.10.2 Audit Findings and Reports

- 8.10.2.1 If an audit reveals that the Services were not provided in accordance with the requirements of this Agreement or the applicable Owner-Contractor Contract, Contractor shall promptly remedy the non-performance.
- 8.10.2.2 If, as a result of such audit, the TLC determines that Contractor has overcharged one (1) or more Owners or failed to pay to Owners the appropriate commission in accordance with the applicable Owner-Contractor Contract, the TLC shall notify Contractor of the amount of such overcharge or underpayment, Contractor shall promptly investigate the same, and Contractor shall promptly pay to the

affected Owner(s) the amount of such overcharges or underpayment. In the event that any such audit reveals an overcharge or underpayment to all Owners during any twelve- (12-) month period exceeding five percent (5%) of the aggregate charges paid by all the Owners, Contractor shall also reimburse the TLC for the reasonable cost of the audit.

8.11 Rate Review

Not less than ninety (90) days before the expiration of the Initial Term, the Management Committee shall meet for the sole purpose of determining whether increases or decreases in the Maximum Prices are appropriate for the upcoming Renewal Term(s) (if applicable). In determining whether increases or decreases in the Maximum Prices are appropriate, the Management Committee shall consider the then-current cost of labor and replacement parts, the level of maintenance and support provided to the Owners (and their respective Medallion Agents) during the Initial Term, the value of the PIM advertising, the cost improvements and other efficiencies experienced by Contractor or Contractor Agents over the Initial Term, and any other cost-impacting factors agreed upon by the Parties. If, as the result of the rate review meeting, the Parties agree in writing that specific decreases or increases in the Maximum Prices are appropriate, the Maximum Prices shall be revised as agreed upon by the Parties and set forth in a duly authorized amendment to this Agreement. After the effective date of such amendment, Contractor may pass-through increases in the Maximum Prices to Owners and shall pass-through any price decreases to Owners; *provided, however, that* the new rates and charges shall apply only during Owner-Contractor Contract Term Extensions (as defined in Section 11.1 (Term Period and Term Extensions) of Attachment OCF (Owner-Contractor Contract Form)) that begin after the effective date of the price-changing amendment to this Agreement. Any changes in the Maximum Prices set forth in a duly authorized price-changing amendment made in accordance with this Section 8.11 shall be considered a TLC Approved Change for purposes of Section 6.1 (Change Control Procedures) of Attachment OCF (Owner-Contractor Contract Form).

9 TERM AND TERMINATION

9.1 Initial Term

The initial term of this Agreement ("Initial Term") begins on the Effective Date and, unless terminated earlier in accordance with this Agreement, expires at 11:59 PM on the last day of the fortieth (40th) calendar month following the Scheduled Service Commencement Date.

9.2 Renewal

The TLC may, at its option, extend the Initial Term for up to two (2) additional twelve- (12-) month periods (each, a "Renewal Term") by submitting a written renewal notice to Contractor at least ninety (90) days prior to the expiration of the

then-current Term.

9.3 Termination by the TLC

The termination rights in this Section 9.3 are supplemental to the termination rights in Section 5.1 (Termination of Agreement) of Appendix A (General Provisions Governing Contracts for Consultants, Professional and Technical Services).

9.3.1 Termination for Cause

9.3.1.1 Default

The TLC may terminate this Agreement or, in the TLC's sole discretion, terminate the affected Service for cause under any of the following circumstances:

1. Under any provision expressly permitting the TLC to terminate this Agreement for cause or for Contractor's material breach;
2. The occurrence of a Critical Performance Failure (in such events, the TLC shall not be required to provide additional notice or cure periods except as set forth in Attachment SLA (Service Levels));
3. Upon not less than thirty (30) days' prior written notice to Contractor when Contractor commits multiple breaches of its duties or obligations under this Agreement that collectively are material, after receipt of written notice of such breaches from the TLC;
4. Upon not less than thirty (30) days' prior written notice from the TLC to Contractor in the event that Contractor, any of its subcontractors or Affiliates is the subject of a criminal investigation conducted by any of the following: (a) a local district attorney; (b) a United States attorney or prosecutor empowered by the United States; or (c) a federal, state or local governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath;
5. Upon not less than thirty (30) days' prior written notice from the TLC to Contractor, if Contractor, any of its subcontractors, or any Affiliate, or any principal of any of the foregoing, has willfully or fraudulently made a materially false statement in connection with a VENDEX questionnaire; or
6. On written notice from the TLC to Contractor upon the occurrence of either of the following: (a) any Outage or Outages cause any Service to be unavailable for use by Passengers or Drivers in at least ten percent (10%) of Taxicabs receiving Owner Base Services (the "Affected Taxicabs") for more than twelve (12) hours (in the aggregate) during any single thirty (30) day period if such

Outage(s) cannot be cured in the Affected Taxicabs within ten (10) days or Contractor can not provide a workaround within ten (10) days that allows the Drivers and Passengers to receive such Service; or (b) there are more than three (3) Outages within a ninety (90) day period causing the same Service to be unavailable in at least ten percent (10%) of the Taxicabs receiving Owner Base Services for at least twelve (12) hours during each such Outage.

9.3.1.2 Obligation to Cure

Without limiting the Parties' rights as set forth in this Section 9.3.1, each Party shall, during the applicable cure period, use all reasonable, continuous and diligent efforts to cure any breach of its obligations or duties under this Agreement after becoming aware of such breach. The notice period required prior to the effective date of a termination for cause is the applicable cure period. If no notice or cure period appears in the provision of this Agreement that gave rise to the right to terminate for cause, then the default cure period shall be thirty (30) days from the date that the breaching Party receives written notice of the breach from the non-breaching Party. Nothing in this Section 9.3 shall be interpreted or construed to restrict a Party's ability to exercise any right it may have to (a) mitigate its damages by procuring Services and the System from an alternate source, (b) pursue equitable and injunctive relief, or (c) initiate any necessary disaster recovery procedure.

9.3.2 Termination for Convenience

On or after the last day of the twelfth (12th) calendar month following the Actual Service Commencement Date, the TLC may terminate this Agreement for its convenience, without cause and without incurring liability upon at least thirty (30) days' prior written notice to Contractor when the TLC determines that termination of this Agreement is in the best interest of the City or the taxicab industry. At any time during the Term, the TLC may terminate this Agreement for its convenience, without cause and without incurring liability upon at least thirty (30) days' prior written notice to Contractor where (a) the TLC rescinds or substantially revises the taxicab technology enhancement rules, regulations or directives and (b) the effect of such rescission or revision(s) to the taxicab technology enhancement rules, regulations or directives is discontinuance of the Taxicab Technology Enhancement Program.

9.3.2.1 Without Cost

The TLC may also terminate this Agreement for its convenience without cost where the TLC issues a notice of termination pursuant to any other provision of this Agreement that permits the TLC to terminate this Agreement without liability.

9.3.3 Termination Due to Initial Delay

In the event that the Actual Service Commencement Date does not occur within forty-five (45) days of the Scheduled Service Commencement Date (as may be extended by the TLC in accordance with this Agreement) due to delays attributable to Contractor or any Contractor Agent, the TLC may terminate this Agreement without incurring termination or early cancellation-related liabilities by issuing written notice to the Contractor any time before the Actual Service Commencement Date.

9.3.4 Termination Upon Change of Control

In the event that Contractor desires to assign this Agreement, Contractor shall submit a written assignment request to the City. The assignment request shall include a completed VENDEX form containing the requested assignee's relevant information. If the City fails to provide its written consent to such assignment under Section 4.10 (Assignment) of Appendix A (General Provisions Governing Contracts for Consultants, Professional and Technical Services) within sixty (60) days after Contractor is notified by the TLC that the requested assignee's VENDEX form is complete (the "Assignment Request Date"), then the requested assignment shall be deemed approved by the TLC. If, however, the City notifies Contractor that the City denies the requested assignment within sixty (60) days following the Assignment Request Date, Contractor may terminate this Agreement without incurring liability by notifying the TLC in writing of such termination within thirty (30) days following the date that the City notifies Contractor of the denial provided that Contractor's requested assignment is prompted by any of the following: (a) a change in Control of Contractor; (b) an acquisition by a third party (excluding any Affiliate of Contractor) of all or substantially all of the assets of Contractor; or (c) the formation of a new entity where Contractor is merged with or into a third party (other than an Affiliate of Contractor). For the avoidance of doubt, a change of Control of Contractor is not subject to the City's prior written consent unless Contractor also intends to assign this Agreement to another party as part of the change in Control.

9.3.5 Termination Due to Change in Law

If a change in Law or new Law (a) materially impairs the City's or the TLC's ability to use the Services or System or (b) materially impairs all or substantially all of the Owners' ability to use the Owner Base Services, then the TLC may terminate this Agreement without incurring liability upon not less than thirty (30) days' prior written notice to Contractor where Contractor fails to obtain an injunction, restraining order or stay during such thirty (30) day period obligating the applicable Governmental Authority to forebear from enforcing the changed or new Law in a way that materially impairs the City's or the TLC's ability to use the Services or System or materially impairs all or substantially all of the Owners' ability to use the Owner Base Services.

9.4 Termination by Contractor

The TLC's failure to perform any of its responsibilities set forth in this Agreement shall not be deemed grounds for termination by Contractor. Contractor's nonperformance under this Agreement shall be excused if and to the extent (a) it results from the TLC's failure to perform its responsibilities, and (b) Contractor provides the TLC with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding the TLC's failure to perform. Contractor may, however, terminate this Agreement and all Owner-Contractor Contracts in effect upon not less than sixty (60) days' prior written notice to the TLC and all affected Owners (including Medallion Agents representing such Owners) under any of the following circumstances:

1. The total number of Taxicabs receiving or scheduled to receive Owner Base Services from Contractor under the Owner-Contractor Contracts is less than one thousand five hundred (1,500) on the one hundred twentieth (120th) day following the Actual Service Commencement Date, provided that Contractor submits such notices of termination no later than the one hundred fiftieth (150th) day following the Actual Service Commencement Date;
2. As permitted under Article 5 (Termination) of Appendix A (General Provisions Governing Contracts for Consultants, Professional and Technical Services); or
3. Where the Actual Service Commencement Date does not occur within forty-five (45) days of the Scheduled Service Commencement Date (as may be extended by the TLC in accordance with this Agreement), *provided that* Contractor issues written notice of termination to the TLC before the Actual Service Commencement Date.

9.5 Effect of Termination

9.5.1 Effect of Termination for Cause on Owner-Contractor Contracts

In the event that the TLC terminates this Agreement for cause, pursuant to Section 9.3.1 (Termination for Cause), Contractor may not enter into any new Owner-Contractor Contracts with Owners (or Medallion Agents) and all Owner-Contractor Contracts shall also be terminated for cause in accordance with the Owner-Contractor Contract.

9.5.2 Effect of Expiration or Any Other Termination by TLC on Owner-Contractor Contracts or Termination by Contractor

In the event that the TLC terminates this Agreement for any reason other than for cause as permitted hereunder, Contractor terminates this Agreement in accordance with Section 9.4 (Termination by Contractor) or upon expiration of this Agreement, Contractor may not enter into any new Owner-Contractor Contracts with Owners or Medallion Agents after the effective date of the termination or expiration. Notwithstanding the foregoing, Contractor may continue to provide Owner Base Services and Optional Services to Owners in accordance with any existing Owner-Contractor Contracts for up to twelve (12)

months following the expiration or earlier termination (other than termination for cause by the TLC) of this Agreement where continued use of such Owner Base Services or Optional Services is not in violation of any TLC rule, regulation or other applicable Laws. If, at any time following the effective date of termination or expiration of this Agreement, continued use of the Owner Base Services or Optional Services fails to comply with any then-current TLC rule, regulation or other applicable Laws, the Owner-Contractor Contract may be terminated by Contractor or any Owner under such Owner-Contractor Contract on not less than ten (10) business days' prior notice to the other party.

9.6 Termination Assistance

- 9.6.1 Contractor shall provide the Termination Assistance Services described in this Section 9.6 commencing six (6) months prior to the expiration of the Term or on such earlier date as the TLC may request, or commencing upon any notice of termination pursuant to this Agreement, and continuing for a period (the "Termination Assistance Period") ending the earlier of (a) twelve (12) months following the effective date of expiration or termination of this Agreement, (b) sixty (60) days following the date that Contractor ceases providing Owner Base Services to all Owners (as expressly permitted under its Owner-Contractor Contracts), or (c) the date that the TLC notifies Contractor in writing to discontinue the Termination Assistance Services.
- 9.6.2 During the Termination Assistance Period, Contractor shall continue to provide the Services and the System pursuant to this Agreement and the Owner-Contractor Contracts, and shall provide to the applicable Owners, Medallion Agents, and TLC, or at the TLC's request to the TLC's designee, all reasonable assistance requested by the TLC or applicable Owners (including their Medallion Agents) to allow Services and the System (or portions thereof designated by the TLC) to continue without interruption or adverse effect and to facilitate the orderly migration away from Services and the System to alternative services or systems, which may be provided by Third Parties.
- 9.6.3 Contractor's reasonable assistance during the Termination Assistance Period shall include the following:
 - 1. Contractor and the TLC will cooperate to develop a migration plan (the "Migration Plan") setting forth the respective tasks to be accomplished by each Party in connection with the termination and a schedule pursuant to which such tasks are to be completed. Contractor shall perform the additional responsibilities and tasks set forth in the Migration Plan. All critical dates and events for the migration must be approved in advance by the TLC, and set forth in the Migration Plan.
 - 2. Contractor shall copy and return all TLC Data (including the copies) in accordance with Section 11.1.3 (Return of TLC Data).

3. Contractor shall identify to the TLC or its designee, pursuant to reasonable terms and conditions, any Contractor Agent (other than Contractor employees), services or products then being utilized by Contractor in performance of Services or provision of the System. The TLC shall be free to contract directly with any such Third Party or Contractor Agent to obtain services or products similar to the Services or System. Contractor shall not interfere with, or otherwise hinder, the TLC's ability or efforts to contract with, or obtain services or products from, such Contractor Agents or Third Party. Nothing in this Subsection 9.6.3(3) shall require Contractor to grant such Third Party or Contractor Agent rights to use Contractor's Intellectual Property Rights in excess of the rights licensed by Contractor to such Third Party or Contractor Agent under a separate agreement.
4. Contractor shall remove at its own expense and within a reasonable time any property owned or leased by Contractor or Contractor Agents, or a Third-Party Provider that Contractor has installed at any TLC Facility or Taxicabs. Contractor will use reasonable care in installing and removing such property and will repair any damage (normal wear and tear and alterations necessary to provide Services excepted) caused to the TLC Facilities and Taxicabs. The TLC shall not be responsible for any Contractor property left more than sixty (60) days after the expiration of the Termination Assistance Period.

9.7 Survival

The terms of Sections 8.10 (Audit Rights), 9.5 (Effect of Termination), 9.6 (Termination Assistance), 10 (Performance Security), 11 (Data and Personal Information), 12 (Confidentiality), 13 (Intellectual Property Ownership), 14 (Indemnification), 15 (Limits on Liability and Disclaimer of Certain Damages), and 18.5 (Publicity and Advertising) shall survive the expiration or termination of this Agreement. Without limiting the foregoing, all provisions of this Agreement that must survive the expiration or earlier termination of this Agreement to provide the benefits bargained for by the Parties shall survive to the extent necessary to provide to each Party the benefits of the bargain set forth in this Agreement.

10 PERFORMANCE SECURITY

Contractor shall, at its own expense, furnish to the TLC a performance bond in the amounts set forth below (the "Performance Bond") as security for Contractor's faithful performance of its obligations under this Agreement:

<u>Due Date</u>	<u>Aggregate Bond Amount</u>
Within sixty (60) days following the Effective Date:	at least \$250,000;
Within thirty (30) days following the date that Contractor receives orders for at least	

500 Taxicab Systems: at least \$500,000;
and

Within thirty (30) days following the date that Contractor receives orders for at least 1000 Taxicab Systems: at least \$1,000,000.

The Performance Bond shall be issued by a surety company that (a) is licensed to do business in the State of New York and (b) has an A.M. Best rating of at least A-7, a Standard and Poor's rating of at least AA, or such other rating authorized by the Mayor's Office of Operations. The term of the Performance Bond shall commence on or before the Actual Service Commencement Date and shall remain in effect for at least one (1) year following the expiration or earlier termination of this Agreement. On or before the applicable due date identified above in this Section 10, Contractor shall present a proposed Performance Bond in the form attached hereto as Attachment BND (Performance Bond Form) to the TLC for its review and approval, such approval not to be unreasonably withheld or delayed. In the event that Contractor elects to obtain the required bond amount in multiple stages as permitted under this Section 10, Contractor shall either (i) furnish multiple Performance Bonds to satisfy the additional bond amounts as of the applicable due dates set forth above or (ii) present the TLC with other documentation (e.g., fully executed riders to the original Performance Bond) establishing that the Performance Bond satisfies the required bond amount as of the applicable due dates set forth above. If the proposed Performance Bond conforms to this Section 10 and is acceptable to the TLC, the TLC shall notify Contractor in writing of the TLC's approval of the proposed Performance Bond. Upon receipt of the TLC's approval notice, Contractor shall promptly perfect such Performance Bond and present it to the TLC.

11 DATA AND PERSONAL INFORMATION

11.1 TLC Data

11.1.1 Ownership and Control of TLC Data

All TLC Data is, or will be, and shall remain the property of the TLC. If any TLC Data also qualifies as Owner Data, then Owner and the TLC shall jointly possess the Intellectual Property Rights (without an obligation to account for royalties) in and to such information and data, including reports made available to both Contractor and the TLC containing such information and data. Without the TLC's approval (in its sole discretion), the TLC Data shall not be (a) used by Contractor or Contractor Agents other than in connection with providing the Services, (b) disclosed, sold, assigned, leased or otherwise provided to Third Parties by Contractor or Contractor Agents, or (c) commercially exploited by or on behalf of Contractor or Contractor Agents. Contractor hereby irrevocably assigns, transfers and conveys, and shall be responsible for causing Contractor Agents to assign, transfer and convey, to the TLC without further consideration all of its and their right, title and interest in and to the TLC Data. Upon request by the TLC,

Contractor shall execute and deliver, and shall cause Contractor Agents to execute and deliver, any documents that may be necessary or deemed desirable by TLC under any Law to preserve, or enable TLC to enforce, its rights hereunder with respect to the TLC Data. Under its Intellectual Property Rights in the TLC Data, the TLC hereby grants to Contractor a worldwide, fully paid-up, non-exclusive, non-transferable, right and license to use and copy TLC Data to the extent necessary for Contractor to provide the Services in accordance with this Agreement. Such license shall take effect on and from the Effective Date without the need for any further documentation from the TLC, and shall expire upon the later of the end of the Term or the Termination Assistance Period.

11.1.2 Correction of Errors in TLC Data and Reports

At the TLC's written request, Contractor shall promptly correct any errors or inaccuracies in the TLC Data and the Reports delivered to the TLC under this Agreement except to the extent caused by a TLC Representative's or TLC's negligence, misconduct, or the failure to observe or perform the TLC's obligations hereunder. At the TLC's request and expense, Contractor shall also promptly correct any other errors or inaccuracies in the TLC Data or such Reports caused by the TLC or any TLC Representative's negligence, misconduct, or the failure to observe or perform the TLC's obligations hereunder.

11.1.3 Return of TLC Data

Upon request by the TLC at any time during the Term and upon expiration or termination of this Agreement, Contractor shall (a) promptly return to the TLC, in the format and on the commercially available media reasonably requested by the TLC, all or any part of the TLC Data and (b) erase or destroy all or any part of the TLC Data in Contractor's or any Contractor Agent's possession, in each case to the extent requested by the TLC; *provided, however, that* each Owner shall be entitled to retain its Owner Data and nothing herein shall obligate Contractor to erase or destroy Owner Data in the possession of the applicable Owner. Contractor and Contractor Agents shall use archival tapes, discs or other storage media containing TLC Data solely for back-up and disaster recovery purposes.

11.1.4 Backing Up and Restoring TLC Data

Contractor shall be responsible for backing up and restoring all TLC Data and other data, and for ensuring the continued continuity of Services as described in Attachments TSS (Description of TLC System Services), OBS (Description of Owner Base Services), and the DR Plan. Upon the TLC's written request, Contractor shall submit additional back-up copies of TLC Data to the TLC in a standard format and on commercially available media designated by the TLC.

11.2 Protected Personal Information

For the purposes of this Agreement, including this Section 11.2, the term "Personal Information" means: (a) any information that can specifically identify an individual, such as name, address, social security number, credit card numbers, together with any other information that relates to an individual who

has been so identified, and (b) any other information that is otherwise subject to privacy legislation or associated rules and regulations. Notwithstanding anything to the contrary contained in this Agreement, with respect to any Personal Information delivered or made available to Contractor or any Contractor Agent under or pursuant to this Agreement or any Owner-Contractor Contract, Contractor agrees as follows:

1. Contractor and Contractor Agents shall, in compliance with all applicable privacy and data protection legislation and other Laws, use and process such Personal Information provided to it solely for the purposes of carrying out Contractor's obligations under, and as expressly set forth in, this Agreement or the Owner-Contractor Contracts.
2. Passenger Personal Information collected by the applicable merchant bank(s) engaged by Contractor to provide the Credit and Debit Card Services shall only be stored in database management systems maintained and administered by the applicable merchant bank(s) (or its/their respective third-party transaction processing agents) in conformance with the PCI Standards. Contractor shall not collect or store Passenger Personal Information in a way that associates such Personal Information with Taxicab location-based information.
3. Contractor shall not, except as agreed to in writing by the TLC, collect any Personal Information on any TLC Representative when such TLC Representative is acting on behalf of the TLC.
4. Except to the extent necessary to provide Credit and Debit Card Services, neither Contractor nor any Contractor Agent shall collect any Personal Information on any Passenger without such Passenger's express, informed and documented consent. Such prohibition includes refraining from collection of Personal Information through any cookie, applet, Web bug, beacon, or similar technology.
5. Except for transient storage of Personal Information in secure Hardware installed in Taxicabs to the extent necessary to complete credit card transactions initiated by Passengers, Contractor shall, using an encryption technique equal to or stronger than the 128-bit key Advanced Encryption Standard, encrypt Personal Information pertaining to Passengers that is transmitted or stored by Contractor or Contractor Agents.

11.3 Safeguarding TLC Data and Personal Information

Contractor shall establish and maintain appropriate safeguards to prevent the destruction, loss, or alteration of, and unauthorized access to, TLC Data and Personal Information in the possession of Contractor or Contractor Agents. In performing the Services and providing the System, Contractor shall comply with the Information Security Requirements, including requirements necessary to maintain TLC network security. In the event that Contractor or Contractor Agents

discover or are notified of a breach or potential breach of security relating to the TLC Data or Personal Information, Contractor shall immediately (a) notify the TLC Program Manager of such breach or potential breach and (b) if the applicable TLC Data was in the possession of Contractor or Contractor Agents at the time of such breach or potential breach, Contractor shall (i) investigate and remediate the effects of the breach or potential breach and (ii) provide the TLC with assurance satisfactory to the TLC that such breach or potential breach will not recur.

11.4 Market Research Data

Notwithstanding any provisions in this Section 11 to the contrary, Contractor may collect, use and retain market research data and Passenger PIM usage data (collectively, "Marketing Data") obtained by or for Contractor; *provided, however, that* (a) Marketing Data shall not contain or include any Personal Information, (b) Contractor and Contractor Agents shall only use such Marketing Data in connection with Contractor's performance under this Agreement or the Owner Contractor Contracts, and (c) such Marketing Data shall be comprised only of data aggregated to identify the collective behavior, preferences, activities or other marketing characteristics of Passengers and not the behavior, preferences, activities or any other characteristics of individually identifiable Passengers. Neither Contractor nor any Contractor Agent shall resell any Marketing Data.

11.5 Location Data for Off-Duty Taxicabs

Except as may be expressly provided in an agreement to provide Optional Service(s) or Owner Base Services, or as may be otherwise required by Law, Contractor shall not disseminate, and shall not allow Contractor Agents to disseminate, in any fashion or to any other person or entity any Taxicab location information regarding a Taxicab while it is off-duty.

12 CONFIDENTIALITY

12.1 Confidential Information

Contractor and the TLC each acknowledge that the other possesses and will continue to possess Confidential Information developed or received by it. Except as otherwise specifically agreed in writing by the Parties, "Confidential Information" shall mean all confidential and trade secret information of a Party, whether or not marked confidential, restricted, proprietary, or with a similar designation at the time of disclosure. In the case of the TLC, Confidential Information also shall include (a) non-public TLC Data, and (b) Personal Information, regardless of how communicated, obtained, received, transmitted, processed, created, stored, archived, or maintained by or for Contractor. Notwithstanding the foregoing, Confidential Information does not include any information subject to disclosure by the City, the TLC or any other Agency pursuant to the Freedom of Information Law, NY Pub. Off. Law §§ 84-90.

12.2 Obligations

- 12.2.1 The TLC and Contractor shall each use at least the same degree of care to safeguard the Confidential Information of the other and to prevent disclosing such information to third parties as each employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature; *provided, however, that* the Parties may disclose such information to their counsel, and to other Third Parties performing services required hereunder where (a) use of such Third Party is authorized by this Agreement, (b) such disclosure is necessary to the Third Party's performance of its responsibilities, (c) the Third Party agrees to execute a non-disclosure agreement substantially in the form of Attachment NDA (Non-Disclosure Agreement Form), and (d) the disclosing Party assumes full responsibility for the acts or omissions of such Third Party. Any disclosure to such Third Party shall be under the terms and conditions provided herein.
- 12.2.2 Neither Contractor nor the TLC shall (a) use or make any copies of the Confidential Information of the other except as contemplated by this Agreement, (b) acquire any right in or assert any lien against the Confidential Information of the other, (c) sell, assign, lease, or otherwise dispose of Confidential Information to Third Parties or commercially exploit such information, or (d) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including copies thereof) to it if requested to do so (in the case of the TLC Data, in the form reasonably requested by the TLC). Upon expiration or any termination of this Agreement and completion of a Party's obligations under this Agreement, each Party shall (except as otherwise provided with respect to Intellectual Property, archival files, or elsewhere in this Agreement) return or destroy, as the owner may direct, all documentation in any medium that contains, refers to, or relates to the other Party's Confidential Information, and shall retain no copies. In addition, the Parties shall cause their employees, officers, directors and authorized agents to comply with these confidentiality provisions.

12.3 Exclusions

Section 12.2 (Obligations) shall not apply to particular information which the recipient can demonstrate (a) was, at the time of disclosure to it, available to the public; (b) after disclosure to it, is published or otherwise becomes available to the public through no fault of the receiving Party; (c) was in the possession of the receiving Party at the time of disclosure to it; (d) was received after disclosure to it from a Third Party who had a lawful right to disclose such information to it; or (e) was independently developed by the receiving Party without reference to Confidential Information of the furnishing Party. In addition, a Party shall not be considered to have breached its confidentiality obligations under this

Section 12.3 for disclosing Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body, provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party promptly and prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

13 INTELLECTUAL PROPERTY OWNERSHIP

13.1 Contractor Intellectual Property

- 13.1.1 Except for the rights licensed (or assigned) expressly under this Agreement and subject to Section 13.5 (Non-Assertion), Contractor shall, as between Contractor and the TLC, retain all Intellectual Property Rights that Contractor has in and to Contractor Pre-Existing Work.
- 13.1.2 Excluding Software licensed under Section 4.6.1 (Contractor-Provided Resources), Contractor hereby grants the City and the TLC an irrevocable, non-exclusive, non-transferable, paid-up, royalty-free, worldwide right to Access, use, execute, reproduce, sublicense its/their rights to TLC Representatives, and perform Intellectual Property (including Contractor Pre-Existing Work) made available by Contractor or any Contractor Agent to the TLC or TLC Representatives, to the extent necessary for the TLC, the City and the TLC Representatives to use the Services and the System in support of the TLC's performance of its governmental functions and responsibilities. The license set forth in this Section 13.1.2 shall expire the earlier of (a) the expiration or earlier termination of the Term (as extended by the Termination Assistance Period) or (b) the date that Contractor's Intellectual Property Rights in such Intellectual Property expire or are deemed extinguished.

13.2 TLC Intellectual Property

As between the Parties, the City shall possess all Intellectual Property Rights in (a) all TLC-Provided Resources owned or acquired by it, and (b) the Requirements. Under its Intellectual Property Rights and subject to the Intellectual Property Rights of Third Parties providing such TLC-Provided Resources, the City grants to Contractor a fully paid-up, non-transferable, non-exclusive right and license during the Term to use and Access TLC-Provided Resources and to use the Requirements for the sole purpose of providing Services pursuant to this Agreement. The license does not give Contractor the right, and Contractor is not authorized, to modify, copy, transfer or sublicense any TLC-Provided Resources.

13.3 Work Product

With the exception of TLC Data, Contractor (or the applicable Contractor Agent) shall retain all Intellectual Property Rights in any work resulting from the performance of Services or provision of the System by Contractor or any Contractor Agent (including Contractor Pre-Existing Work incorporated therein) pursuant to this Agreement (collectively, "Work Product"). Contractor hereby grants the City and the TLC an irrevocable, perpetual, non-exclusive, non-transferable, paid-up, royalty-free, worldwide right to Access, use, copy, execute, reproduce, sublicense its/their rights to TLC Representatives, display and perform such Work Product, and to create and use interfaces between the Work Product and other systems and software used by the City, the TLC, or any other Agency, to the extent necessary to provide the TLC and the City with full use and enjoyment of the Work Product in support of the TLC's performance of its governmental functions and responsibilities.

13.4 Know How

Nothing contained in this Agreement shall restrict Contractor's or the City's (including any Agency's) use of any knowledge, experience and know-how (including ideas, concepts and techniques) developed by such Party in the course of performing its obligations under this Agreement to the extent that such use of such knowledge, experience and know-how does not result in an unauthorized disclosure of Personal Information or the other Party's Confidential Information.

13.5 Non-Assertion

Contractor agrees that it shall not assert against the TLC, the City, TLC Representatives or the Authorized Contractors (a) any Intellectual Property Rights that Contractor possesses or controls in a way that adversely affects the TLC's or the Owner's ability to use the Services and System during the Term (and the Transition Assistance Period) in accordance with this Agreement or the Owner-Contractor Contract or (b) any claim that an Authorized Contractor's services or products provided in response to the RFP or the Owners' or the TLC's use of such services or products during the Term (and the Transition Assistance Period) infringes any of Contractor's Intellectual Property Rights. Notwithstanding the foregoing, Contractor may (i) seek injunctive relief in the event that any other Authorized Contractor, an Owner or a Medallion Agent misappropriates Contractor's or Contractor Agents' trade secrets or infringes upon any Contractor or Contractor Agent trade marks or service marks, (ii) assert any and all claims available at law or equity against other Authorized Contractors, Owners and any other third parties to recover damages or to obtain injunctive relief to the extent such claims arise out of the sale of equipment or products unrelated to the Taxicab Technology Enhancement Program in a manner that constitutes infringement of any of Contractor's or Contractor Agents' patents, and (iii) assert any and all claims against other Authorized Contractors to recover damages or to obtain injunctive relief to the extent such claims arise

out of the sale of equipment or products in a manner that constitutes willful infringement of Contractor's or Contractor Agents' patents.

13.6 Survival of Intellectual Property Rights

Each Party's obligation with respect to the other Party's Intellectual Property shall continue until the other Party's Intellectual Property Rights in such Intellectual Property expire or are extinguished under applicable Law.

14 INDEMNIFICATION

14.1 Indemnity by Contractor

Contractor agrees to indemnify, defend and hold harmless the City, TLC, or any other Agency and their respective officers, directors, employees, agents, successors, and assigns (each, a "TLC Indemnitee"), from any and all Losses and threatened Losses arising from or in connection with third-party claims attributable to any of the following:

1. Contractor's breach of the representations and warranties set forth in Section 17.1.1(12) (Representations and Warranties);
2. Contractor's failure to obtain the Required Consents for which it is responsible under Section 4.6.3 (Required Consents);
3. Any third-party claims of infringement or misappropriation of any Intellectual Property Rights to which a TLC Indemnitee may be subject because of, or related to, any claim or allegation that the Services, Hardware, Software or other portion of the System or Services, or the use thereof by the TLC, or any TLC Representative, Passenger, Driver or Owner, infringes, misappropriates or violates any Intellectual Property Rights of a third party, *provided, however, that*, Contractor shall have no obligation to indemnify or defend TLC Indemnitees under this Subsection 14.1(3) for any infringement, misappropriation or violation of a third party's Intellectual Property Rights by a TLC Indemnitee where such infringement, misappropriation or violation is caused by modifications to any Hardware, Software or other portion of the System or Services by a TLC Indemnitee or another TLC Representative without the consent of Contractor or a Contractor Agent; or
4. Contractor's breach of its obligations with respect to Personal Information set forth in Section 11.2 (Protected Personal Information).

14.2 Additional Indemnities

Contractor agrees to indemnify, defend and hold harmless the TLC Indemnitees, from any and all Losses and threatened Losses arising from or in connection with third-party claims attributable to any of the following:

1. The death or bodily injury of any agent, employee, business invitee,

or business visitor or other person caused by the tortious conduct (including acts or omissions giving rise to product liability claims) or willful conduct of the Contractor or any Contractor Agent;

2. The damage, loss or destruction of any real or tangible personal property caused by the tortious conduct or willful conduct of the Contractor or any Contractor Agent; or
3. Any claim, demand, charge, action, cause of action, or other proceeding asserted by any employee or former employee of Contractor or any Contractor Agent against any TLC Indemnitee but resulting from an act or omission of the Contractor or any Contractor Agent in its capacity as an employer of such employee or former employee.

14.3 Infringement

If Contractor's or any Contractor Agent's provision or the Owners', TLC's or the TLC Representatives' use of any Service, Software, Hardware, Network or other component of the System is enjoined or threatened to be enjoined or in the TLC's reasonable opinion is likely to be so enjoined, or Contractor or the TLC faces a substantial risk of being held liable for infringement of the Intellectual Property Rights of a Third Party by virtue of the creation, provision or use of any Service, Software, Hardware, Network or other component of the System (each, a "Service Component"), Contractor shall take one of the following actions at its own expense: (a) procure for the TLC and the affected Owners the right to continue using such Service Component; (b) modify such Service Component so that it is non-infringing (provided that such modification does not materially impair the intended use of the Service Component as contemplated hereunder); or (c) upon notice to the TLC and the affected Owners, substitute for such Service Component a comparable, non-infringing Service Component. If neither (a) nor (b) nor (c) is commercially practicable, then Contractor shall direct the affected Owners to discontinue their use of such Service Component, the TLC shall discontinue its use of such Service Component and Contractor shall (i) discontinue providing such Service Component to the affected Owners and the TLC as soon as practicable and, (ii) promptly refund to all affected Owners any charges related to the Service Component, which refund shall be pro rata assuming a useful life of sixty (60) months from the date that the Service Component was first put into productive use under this Agreement or the applicable Owner-Contractor Contracts, and (iii) reimburse affected Owners for costs they incur to obtain replacement services or products. If discontinuance of potentially infringing Service Components in accordance with this Section 14.3 materially and adversely affects the performance of the Services or remaining System Components, the TLC may, in its sole discretion, terminate this Agreement for cause pursuant to Section 9.3.1 (Termination for Cause) on at least thirty (30) days' prior written notice to Contractor.

14.4 Indemnity by the City for TLC Content

The City agrees to indemnify, defend and hold harmless the Contractor, Contractor Affiliates and their respective officers, directors, employees, successors, and assigns (each, a "Contractor Indemnitee"), from any and all Losses and threatened Losses arising from or in connection with third-party claims based on defamation, copyright infringement or trade mark infringement asserted against any Contractor Indemnitee resulting from display of TLC Content (as such TLC Content is made available to Contractor by the TLC) on any PIM managed by Contractor provided that the applicable TLC Content was not altered or presented in a manner that conflicts with this Agreement or the TLC's written instructions.

14.5 Indemnification Procedures

14.5.1 Notice

For purposes of this Section 14.5, the Party (and the additional individuals or entities covered by the applicable indemnity) receiving the benefit of an indemnity under this Agreement shall be referred to as the "Indemnified Party." The Party obligated to provide the indemnity under this Agreement shall be referred to as the "Indemnifying Party" for purposes of this Section 14.5. Promptly after the Indemnified Party's receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which any Indemnified Party will seek indemnification, the Indemnified Party shall notify the Indemnifying Party of such claim in writing. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations to indemnify the Indemnified Party under this Agreement except to the extent that it can demonstrate harm attributable to such failure. Within fifteen (15) days following receipt of written notice from the Indemnified Party relating to any claim or the Indemnifying Party's actual notice from any other source (whichever is earlier), but no later than ten (10) days before the date on which any response to a complaint or summons is due, the Indemnifying Party shall notify the Indemnified Party in writing if the Indemnifying Party determines, in good faith, that it is not obligated to take over the defense and settlement of the claim because the claim is outside the scope of its indemnification obligations (a "Notice of Rejection").

14.5.2 Procedure Following Notice of Rejection

If the Indemnifying Party fails to deliver a Notice of Rejection relating to any claim within the required notice period, the Indemnifying Party shall have, and shall promptly take, sole control over the defense and settlement of such claim; *provided, however, that* (a) the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (b) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim. If the Indemnifying Party delivers a Notice of Rejection relating to any claim in accordance with this

Section, (i) the Indemnified Party shall defend the claim in such manner as it, in its sole discretion, deems appropriate and (ii) where it is determined by a court of competent jurisdiction that the claim is within the scope of the Indemnifying Party's indemnification obligations notwithstanding the Indemnifying Party's Notice of Rejection, the Indemnifying Party shall promptly reimburse the Indemnified Party for all costs and expenses associated with its defense and or settlement of the claim, and the Indemnifying Party shall reimburse the Indemnified Party for all other Losses incurred as the result of such claim.

14.6 Subrogation

In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Section 14, the Indemnifying Party shall, upon payment of such indemnity in full, be subrogated to all rights of the Indemnified Party with respect to the claims to which such indemnification relates.

15 LIMITS ON LIABILITY AND DISCLAIMER OF CERTAIN DAMAGES

15.1 Liability Disclaimers and Limits

- 15.1.1 Except as expressly provided in this Agreement and subject to Section 15.2 (Exclusions), in no event shall either Party have any liability, whether in contract, tort (including, without limitation negligence), warranty or any other legal or equitable grounds, for any loss of interest, profit or revenues by the other Party or for any consequential, indirect, special, punitive or exemplary damages suffered by the other Party, that arise from or are related to this Agreement, even if such Party has been advised of the possibility of such losses or damages; provided, however, that this clause will not prevent either Party from recovering payments of Performance Credits owed under this Agreement.
- 15.1.2 Subject to Section 15.2 (Exclusions), each Party's aggregate liability to the other for actual, special, direct and incidental damages arising out of this Agreement during any twelve (12) month period, regardless of the form of action, shall be limited to the greater of (a) the aggregate of charges paid by Owners to Contractor during such twelve (12) month period or (b) one-million dollars (\$1,000,000).
- 15.1.3 Nothing in this Section 15.1 shall limit or affect either Party's right to obtain injunctive relief where such relief is available to such Party at law or in equity.

15.2 Exclusions

The limitations in Section 15.1 (Liability Disclaimers and Limits) shall not apply to (a) Losses that are the subject of any obligation to provide indemnification under this Agreement, (b) Losses arising from direct claims between the Parties based on death or bodily injury caused by the negligence or willful conduct of a Party, (c) Losses arising from direct claims between the Parties based on damage to

real property caused by the negligence or willful conduct of a Party, (d) amounts recoverable under the insurance coverages set forth in Section 16 (Insurance), or (e) Performance Credits payable by Contractor in accordance with Attachment SLA (Service Levels).

15.3 Duty to Mitigate

Each Party shall have a duty to mitigate damages for which the other Party is responsible.

16 INSURANCE

In addition to the insurance coverage the Contractor is required to maintain under Sections 4.1 (Employees) and 4.3 (Insurance) of Appendix A (General Provisions Governing Contracts for Consultants, Professional and Technical Services), Contractor shall obtain and maintain in force throughout the Term, at its own expense, the following insurance coverage:

1. Automobile Liability Insurance covering use of all owned, non-owned, and hired vehicles with a minimum combined single limit of one million dollars (\$1,000,000) per occurrence for bodily injury and property damage liability.
2. Crime Insurance covering Employee Dishonesty and Computer Fraud coverage for loss arising out of or in connection with any fraudulent or dishonest acts committed by the employees of Contractor, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000). This policy shall be endorsed to name the TLC and the City as joint loss payees as the Parties' interests may appear.
3. Professional/Errors and Omissions Liability insurance appropriate for the types of services provided by Contractor or Contractor Agents. Coverage should be for a professional error, act or omission arising out of the scope of services in this Agreement of five million dollars (\$5,000,000) per occurrence.
4. Umbrella liability coverage in an amount of at least five million dollars (\$5,000,000) in excess of the other insurance coverage designated in this Section 16.

Contractor may satisfy its obligation to obtain the coverages described in item (2) above by obtaining an additional rider under its Professional/Errors and Omissions Liability insurance policy. The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by the TLC. Contractor shall cause its insurers to (a) name the TLC and the City as additional insured and (b) issue certificates of insurance to the TLC evidencing that the coverage and policy endorsements required under this Agreement are maintained in force on the Effective Date and each anniversary thereof, and that not less than thirty (30) days' written notice shall be given to the TLC prior to any modification, cancellation or non-renewal of the policies. The insurers selected by Contractor

must be approved by the TLC and have an A.M. Best rating of at least A-7, a Standard and Poor's rating of at least AA or such other rating authorized by the Mayor's Office of Operations. Except for the coverages described in Section 16(3), all liability insurance policies shall be written on an "occurrence" policy form. Contractor shall be responsible for payment of any and all deductibles and self insured retentions from insured claims under its policies. The maintenance of the foregoing insurance shall not in any way operate to limit the liability of Contractor to the TLC under this Agreement.

17 REPRESENTATIONS, WARRANTIES AND COVENANTS

17.1 Representations and Warranties

17.1.1 In addition to the other representations and warranties set forth elsewhere in this Agreement, Contractor represents and warrants as follows:

1. Services shall be performed in accordance with the Contractor Standard of Care;
2. Contractor shall use adequate numbers of qualified individuals with suitable training, experience, and skill to perform Services and provide the System;
3. Contractor and Contractor Agents possess the resources, skills, qualifications, and experience required to perform all of Contractor's obligations under this Agreement;
4. Contractor is a corporation duly incorporated validly existing and in good standing under the Laws of the State of New York;
5. Contractor has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;
6. For the duration of the Term, the System shall substantially conform to the Requirements and Specifications;
7. The execution, delivery, and performance of this Agreement by Contractor (a) has been duly authorized by Contractor and (b) will not conflict with, or result in a breach of or constitute a default under, any other agreement to which Contractor is a party or is bound;
8. Contractor is in compliance with all Laws applicable to Contractor and has obtained all applicable permits and licenses required of Contractor in connection with its obligations under this Agreement;
9. There is no outstanding litigation, arbitrated matter or other dispute to which Contractor is a party which, if decided unfavorably to Contractor, would reasonably be expected to have

a material adverse affect on Contractor's ability to fulfill its obligations under this Agreement;

10. To the best of Contractor's knowledge after appropriate due diligence and review of a written legal opinion(s) obtained from counsel, Contractor's and Contractor Agents' Services or the System do not and will not infringe upon the Intellectual Property Rights of any Third Party;
11. To the best of Contractor's knowledge after appropriate due diligence and review of a written legal opinion(s) obtained from counsel, the TLC's, and any TLC Representative's, Passenger's, Driver's or Owner's use of the Services, Hardware, Software and other portions of the System in accordance with this Agreement does not and will not infringe upon the Intellectual Property Rights of any Third Party; and
12. In connection with Credit and Debit Card Services, Contractor and Contractor Agents shall comply with all written payment card industry standards (as they may change from time-to-time during the Term) adopted and issued by Master Card International, Visa International, American Express, or the other major credit card providers identified in the Requirements (collectively, "PCI Standards") where such PCI Standards apply to data security, security audits, and security scanning procedures. Examples of such PCI Standards are, as of the Effective Date, available at the following URLs¹:
https://sdp.mastercardintl.com/pdf/pcs_manual.pdf;
https://sdp.mastercardintl.com/doc/pci_audit_procedures.doc; and
https://sdp.mastercardintl.com/pdf/pcd_manual.pdf.

17.1.2 The TLC represents and warrants that:

1. The TLC has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;
2. The execution, delivery, and performance of this Agreement by the TLC has been duly authorized by the City; and
3. The TLC is in compliance with all Laws applicable to the TLC in connection with its obligations under this Agreement.

17.1.3 EXCEPT AS SPECIFIED OR REFERENCED IN THIS SECTION 17.1, NEITHER THE TLC NOR CONTRACTOR MAKES ANY OTHER WARRANTIES WITH RESPECT TO THE SERVICES OR THE SYSTEM AND EACH EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED

¹ The URLs are listed for Contractor's convenience. Contractor shall be solely responsible for obtaining current versions of the applicable PCI Standards.

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17.2 Covenants

17.2.1 Viruses and Attacks

Contractor shall use commercially reasonable efforts, consistent with prudent systems security and management practices to ensure that no computer program viruses, Malicious Code or other destructive code (collectively, "Viruses") are coded or introduced into the Networks, Software or the System, and that the Networks, Software and the System are protected against Attack. Contractor agrees that, in the event a Virus is introduced or an Attack occurs, Contractor shall immediately commence and diligently pursue, at no charge to the TLC, elimination of the Virus and defense against the Attack. Pending successful elimination or defense, Contractor shall take all feasible steps to (a) reduce the effects of the Virus or Attack and, (b) if the Virus or Attack causes a loss of operational efficiency or loss of data, mitigate and restore such losses. The TLC shall cooperate with and assist Contractor in taking any necessary action required under this Section 17.2.

17.2.2 Disabling Code

Without the prior written consent of the TLC, neither Contractor nor any Contractor Agent shall knowingly insert into the Hardware, Software, Networks, or any other System component any code or instructions which would have the effect of disabling or otherwise shutting down all or any portion of the Services or the System or which could create a Security Hole. With respect to any disabling code that may be part of the Software, Contractor shall not invoke nor permit any other individual or entity to invoke such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without the TLC's prior written consent. If Contractor becomes aware of any Security Hole, it shall promptly notify the TLC in writing thereof and immediately develop and implement an appropriate fix.

17.2.3 Anti-competitive Conduct

In performing under this Agreement, Contractor shall not engage in any anti-competitive conduct that would constitute a violation of federal or New York State antitrust laws. The TLC may, upon not less than thirty (30) days' written notice to Contractor, terminate this Agreement for cause for violation of this provision.

17.2.4 Conflicting Agreements with Owners

17.2.4.1 Under Section 3.4 (Legacy Agreements) of Attachment OCF (Owner-Contractor Contract Form), certain prior agreements by and between Contractor (or Contractor Agents) and certain Owners (or Medallion Agents) shall be superseded by Owner-Contractor Contracts by and between Contractor (or Contractor Agents) and those same Owners

(or Medallion Agents) as provided in such Section 3.4 (Legacy Agreements) of Attachment OCF (Owner-Contractor Contract Form).

17.2.4.2 The Parties also acknowledge that certain rights and obligations arising under agreements between one or more Owners (or Medallion Agents) and Contractor or a Contractor Agent could interfere with or frustrate the purpose of this Agreement or the market place for taxicab technology enhancements created by the TLC as part of the Taxicab Technology Enhancement Program in that enforcement of such rights would impose costs, fees, burdens or other liabilities on an Owner (or Medallion Agent) who is party to such an agreement and who also purchases or uses Approved Technology Enhancements (as defined below) provided by Contractor (or any Contractor Agent) or another Authorized Contractor or its suppliers or subcontractors (each, a "Conflicting Agreement"). To help ensure that all Authorized Contractors are given a fair opportunity to sell their respective taxicab technology enhancement products and services to Owners if, and to the extent that, such products and services are authorized by the TLC (the "Approved Technology Enhancements"), Contractor and all Contractor Agents shall, as a condition of this Agreement, waive any rights it or they may have under any Conflicting Agreements to impose costs, fees, burdens or other liabilities on an Owner (or Medallion Agent) that is party to a Conflicting Agreement where such costs, fees, burdens, or other liabilities would result from such Owner's (or Medallion Agent's) purchase or use of Approved Technology Enhancements provided by Contractor (or any Contractor Agent) or by another Authorized Contractor (or its suppliers or subcontractors). The scope of the waiver includes Contractor's and Contractor Agents' forbearance from enforcing rights under Conflicting Agreements against an Owner (or Medallion Agent) that (i) impose costs, fees, burdens or other liabilities where such Owner (or Medallion Agent) ceases using products or services provided under the Conflicting Agreements that are similar to all or a portion of the Approved Technology Enhancements (e.g., an Owner removes its existing credit card readers and discontinues associated services) or (ii) impose costs, fees, burdens or other liabilities on an Owner (or a Medallion Agent) if it accepts advertising or receives advertising revenue from advertisements on passenger information monitors supplied by Contractor (or any Contractor Agent) or other Authorized Contractors or their subcontractors or suppliers. The waiver in this Section 17.2.4.2 shall not apply to Contractor's or any Contractor Agent's rights to sell or place advertisements on Taxicab exteriors; *provided, however, that* such rights (or Contractor's or any Contractor Agent's enforcement of such rights) shall not encumber, impair, burden, or otherwise affect advertisements in the interior of

any Taxicab or any other PIM content. Except to the extent modified by the waiver set forth in this Section 17.2.4.2 or superseded (if applicable) under Section 3.4 (Legacy Agreements) of an Owner-Contractor Contract, all terms and conditions contained in the Conflicting Agreements shall remain in full force and effect.

18 MISCELLANEOUS

18.1 *Force Majeure* Events and Excusable Delays

- 18.1.1 Neither Party shall be liable for any default or delay in performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; strikes; terrorist acts; or any other similar cause beyond the reasonable control of such Party, but only if the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party at its expense through the use of alternate sources, workaround plans or other means. In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its Best Efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due.
- 18.1.2 If any of the events under Section 18.1.1 above substantially prevents, hinders, degrades or delays performance of Services or the System, then Contractor shall, if appropriate, invoke the procedures in the DR Plan.
- 18.1.3 If any of the events under Section 18.1.1 above substantially prevents, hinders, degrades or delays performance of Services or the System for more than forty-five (45) consecutive days, then, at the TLC's option, the TLC may terminate this Agreement without incurring liability as of the date specified by the TLC in a written notice of termination to Contractor.

18.2 Use of Subcontractors

- 18.2.1 Contractor's use of subcontractors shall be governed by this Section 18.2 and Section 4.11 (Subcontracting) of Appendix A (General Provisions Governing Contracts for Consultants, Professional and Technical Services).

- 18.2.2 A list of approved subcontractors and the Services to be performed and System components to be provided by them is set forth in Attachment SUB (Approved Subcontractors).
- 18.2.3 If the TLC expresses any concerns to Contractor about any subcontracted services or products, Contractor shall discuss such concerns with the TLC and work in good faith to resolve the TLC's concerns on a mutually acceptable basis.

18.3 Mechanics' Liens

- 18.3.1 Contractor will not file any mechanics' liens, or by its action or inaction permit any mechanics' liens to be filed, on or against property or realty of the City or the TLC. In the event that any such lien arises as a result of Contractor's action or inaction, Contractor will remove such mechanics' lien at its sole cost and expense within ten (10) days of Contractor's receipt of written notice of the existence of such lien.
- 18.3.2 Contractor shall require each Contractor Agent with whom Contractor enters into a subcontract for the provision of goods or services in connection with the Services or the System: (a) to specifically and expressly waive any and all rights to any mechanics' liens; (b) not to file or record in the office of the county clerk, or any other place permitted by applicable Law, such subcontract or notice thereof or any notice of intention, lien, claim, or stop notice; and (c) to similarly bind in writing any subordinate subcontractor or materialman of such Contractor Agent.
- 18.3.3 If any Contractor Agent shall file in a county clerk's office a notice of intention, lien, claim, or stop notice with respect to a mechanic's lien (collectively "Lien Claim") against the TLC or the City, Contractor shall be liable for any cost, expense, or damage (including reasonable attorneys' fees) incurred by the TLC, the City, other Agencies or any of their landlords as a result of the filing or asserting of any Lien Claim or other charge by any Contractor Agent furnishing labor or material pursuant hereto. The TLC shall promptly notify Contractor of the filing of any Lien Claim or other charge upon discovery of same by the TLC, but the TLC shall not itself undertake any action with respect thereto unless Contractor fails or refuses to perform Contractor's obligations with respect to removing or satisfying any Lien Claim.

18.4 Changes in Law and Regulations

- 18.4.1 Each Party shall notify the other of any changes in Law known by such Party where such changes may relate to the TLC's, Drivers', Passengers' or Owners' use of the Services or System or Contractor's ability to provide the Services or the System. Contractor and the TLC shall work together to identify the impact that such changes are likely to have on the Services and the System. As described in Section 16.3.1

(Special Damages for Regulatory Non-Compliance) of Attachment OCF (Owner-Contractor Contract Form), Contractor shall be responsible for certain fines and penalties imposed on Owners or Drivers in accordance with Section 16.3.1 (Special Damages for Regulatory Non-Compliance) of Attachment OCF (Owner-Contractor Contract Form).

18.4.2 Contractor shall perform the Services in accordance with this Agreement regardless of changes in Law. If such changes prevent Contractor from performing its obligations under this Agreement, Contractor shall develop and, upon the TLC's approval, implement a suitable workaround until such time as Contractor can perform its obligations under this Agreement without such workaround.

18.5 Publicity and Advertising

18.5.1 Contractor shall not use the TLC's, the City's or any other Agency's name, trademarks or logos or any other reference to such parties directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purpose without the TLC's prior written consent. The TLC shall not use Contractor's or any Contractor Agent's service marks or trademarks without Contractor's prior written consent.

18.5.2 Contractor shall not conduct or prepare any Media advisory, press conference, Media walk-through, Media ride-along, event listing, essay, pre-packaged vosot (a desk read news story with accompanying B-roll or sound bites), B-roll (relevant video footage), white paper (a treatise on a particular topic) or Media "call around" (approaching/soliciting all the local media to pitch a story about a particular topic), press releases, quotes, statements, photographs, film or videotape footage or any graphic images (collectively, "Public Material") relating to this Agreement (including any services or products provided hereunder) or the Owner Contractor Contracts (including any services or products provided thereunder), and shall not furnish or use any such Public Material, without prior written approval of the TLC.

18.5.3 All approvals under this Section 18.5 must be requested by the Contractor from the TLC Office of Public Affairs. To request any approvals required under this Section 18.5, Contractor shall submit written notice (which shall include a detailed description of the content, nature and intended use of the Public Material) to the TLC Office of Public Affairs. The TLC Office of Public Affairs may, in its sole discretion and in accordance with applicable Law, approve or deny any such request.

18.5.4 Notwithstanding the foregoing, Contractor may, without the TLC's prior approval, publicly acknowledge that it has received approval to proceed

in furtherance of the Proposal it submitted in response to the RFP. If Contractor receives a Notice to Proceed, Contractor may also publicly acknowledge that it is an Authorized Contractor without first obtaining the TLC's prior approval. Contractor shall promptly notify the TLC of all written or recorded public acknowledgements issued by or for Contractor under this Section 18.5.4.

18.5.5 This Section 18.5 shall not apply to (a) the Offer Documentation used to solicit Owners in accordance with this Agreement, and (b) the content displayed to Passengers via the PIM. PIM content shall conform to the guidelines set forth in Attachment PIM (PIM Content).

18.6 Notices

Unless a contrary notice procedure is set forth in this Agreement for specific events, all notices, requests, demands, and determinations under this Agreement (other than routine operational communications) (collectively, "notices"), shall be in writing and marked "URGENT - DELIVER TO ADDRESSEE IMMEDIATELY." A notice shall be deemed to have been delivered (a) upon delivery, when delivered by hand, (b) one (1) day after being given to an express overnight courier with a reliable system for tracking delivery, (c) upon delivery of a confirmed facsimile (provided that a copy is simultaneously sent by another means specified in this Section 18.6), or (d) five (5) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested and postage prepaid. All notices shall be addressed as follows:

In the case of the TLC or the City:

Office of General Counsel
New York City Taxi and Limousine Commission
40 Rector Street
Fifth Floor
New York, New York 10006

With a copy to:

Chief of Staff
New York City Taxi and Limousine Commission
40 Rector Street
Fifth Floor
New York, New York 10006

In the case of Contractor:

VeriFone Transportation Systems Inc.
36-15 13th Street
Long Island City, NY 11106
Attn: Amos Tamam

A Party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

18.7 Covenant of Further Assurances

The TLC and Contractor covenant and agree that, subsequent to the execution and delivery of this Agreement and, without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

18.8 Counterparts

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

18.9 Consents, Approval and Future Agreement

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall be undertaken in good faith and shall not be unreasonably delayed or withheld. Where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement in a Party's sole discretion, such action may be withheld for any or no reason. In any event, a Party will notify the other Party of a decision promptly after a reasonable period to obtain and analyze the relevant facts. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

18.10 Waiver of Default; Cumulative Remedies

18.10.1 A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties of any of the obligations to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach of such obligation or of any other obligation herein.

18.10.2 All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

18.11 Entire Agreement; Amendment

This Agreement, including any Attachments referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the

subject matter contained in this Agreement. Except for documents incorporated by reference herein that are subject to change from time to time as permitted under this Agreement, no amendment, change, waiver, or discharge hereof shall be valid unless such amendment, change, waiver or discharge (a) is in writing and signed by an authorized representative of the Party against which such amendment, change, waiver, or discharge is sought to be enforced and (b) is duly authorized by the TLC and is in accordance with the Procurement Policy Board Rules. If the Parties agree to amend this Agreement, Contractor acknowledges that the TLC may notify other Authorized Contractors of any such duly authorized amendment and shall make such amendment available to all Authorized Contractors where the TLC determines that such amendment waives or materially modifies the terms or conditions in the following: this Master Agreement; Attachment OCF (Owner-Contractor Contract Form) (excluding its Exhibits); Attachment CCP (Change Control Procedures); or Appendix A.

18.12 Contractor's Affirmation

Contractor's tax affirmation is set forth in Attachment TAX (Tax Affirmation).

WHEREFORE, the Parties hereto have executed this Agreement on the dates appearing by their respective signatures.

THE CITY OF NEW YORK

VERIFONE TRANSPORTATION
SYSTEMS INC, D/B/A TAXITRONIC

By:

By:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Approved as to Form and
Certified as to Legal Authority

Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY THE CITY OF NEW YORK

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ON THE ____ DAY OF _____, 2005, BEFORE ME PERSONALLY
CAME _____ TO ME KNOWN AND KNOWN TO ME
TO BE THE _____ OF THE TAXI AND LIMOUSINE
COMMISSION, THE PERSON DESCRIBED AS SUCH IN AND WHO AS SUCH
EXECUTED THE FOREGOING AGREEMENT AS FOR THE PURPOSES
THEREIN MENTIONED.

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

=====

ACKNOWLEDGMENT BY CORPORATION

STATE OF NEW YORK)
) SS.:
COUNTY OF)

ON THE ____ DAY OF _____, 2005, BEFORE ME PERSONALLY
CAME _____ WHO BEING DULY SWORN, DID
DEPOSE AND SAY THAT (S)HE RESIDES IN THE CITY OF
_____, STATE OF _____, THAT (S)HE IS THE
OF, _____, INC., THE
CORPORATION DESCRIBED IN AND WHICH EXECUTED THE FOREGOING
AGREEMENT; THAT (S)HE KNOWS THE SEAL OF SAID CORPORATION;
THAT THE SEAL AFFIXED TO THE SAID INSTRUMENT IS SUCH
CORPORATE SEAL; THAT IT WAS SO AFFIXED BY ORDER OF THE BOARD
OF DIRECTORS OF SAID CORPORATION; AND THAT (S)HE SIGNED
HIS/HER NAME THERETO BY LIKE ORDER.

NOTARY PUBLIC OR COMMISSIONER OF DEEDS